

September 11, 2008

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1299

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

RONALD SCHMIDT,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

THURSDAY, SEPTEMBER 11, 2008

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

September 11, 2008

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 3:45 PM.

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MASTROIANNI & FORMAROLI, INC.

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Certified Court Reporting & Videoconferencing

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251 South White Horse Pike

24

Audubon, New Jersey 08106

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856-546-1100

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A P P E A R A N C E S:

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JAIME KAIGH, ESQUIRE

- and -

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RODNEY D. RAY, ESQUIRE

32 NORTH BLACK HORSE PIKE

6

BLACKWOOD, NEW JERSEY 08012

856-232-3337

7

856-232-4561

ATTORNEYS FOR THE PLAINTIFFS

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ROSELLI & GRIEGEL, PC

BY: MARK ROSELLI, ESQUIRE

11

- and -

BY: STEVEN GRIEGEL, ESQUIRE

12

1337 STATE HIGHWAY 33

HAMILTON SQUARE, NEW JERSEY 08690

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609-586-2257

ATTORNEYS FOR THE DEFENDANTS

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1 JUDGE BISSELL: The court now reopens
2 proceedings in the matter of Ronald Schmidt, docket
3 number 08-1299.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Schmidt.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Schmidt was a resident of D Tent
18 when the incident occurred, an incident which he
19 describes as occurring when the SOG officers came to
20 pull the inmates from D Tent in order to search it.
21 He also describes the events in question in his
22 testimony at various excerpts, and I'm going to read
23 those parts which I consider pertinent to the
24 decision here.

25 Beginning at page 18, line three.

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1 "Question: Can you tell us how long
2 after the death of Officer Baker, approximately, the
3 assault occurred?

4 "It was approximately two days.
5 Approximately two days.

6 "And what exactly happened?

7 "Our officers came around, told us all
8 to get in our bunks and another officer came in after
9 and told us to strip down to our underwear and get in
10 our bunks face down.

11 "Did you obey those orders?

12 "Yes.

13 "And then how long did you wait until
14 the next command was given or the next event
15 occurred?

16 "Answer: There was a lot of commotion
17 going on. It wasn't really a command for one tent,
18 it was a command for the whole unit to stay face
19 down, don't look at the officers and remain where you
20 are until an officer comes up to you.

21 "Question: Who was it exactly that
22 gave you that order?

23 "Answer: I don't know. I don't know
24 who it was."

25 Continuing. "Was it a SOG officer?

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1 "Yes, it was somebody in the SOG unit.

2 "And how many officers entered the

3 tent?

4 "I believe there were six or seven at

5 the time.

6 "Okay. And did you say anything other

7 than to get on your bunk and stay on your bunk face

8 down?

9 "No, that was it.

10 "And then what happened?

11 "When they came into the unit

12 originally I was looking sideways to see who was

13 coming into the tent because I didn't know who it

14 was. And when I turned sideways, one of the officers

15 came over and cracked me in the elbow with a night

16 stick.

17 "When you say he cracked you in the

18 elbow.

19 "Hit me with the night stick on my

20 elbow. Told me to put my face in the pillow.

21 "Which elbow did he hit?

22 "My left.

23 "Was it just one officer that struck

24 you at that time?

25 "Yes.

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1 "And again, you don't know who this
2 officer was?

3 "No.

4 "Can you describe the hit on your elbow
5 and show the court exactly where your elbow was hit?

6 "Answer: I was struck across here. My
7 hand was behind me because we had our hands behind
8 our back. When he hit me, he hit me across my elbow.

9 "Did he hit any other inmates at that
10 time?

11 "I'm not aware if he because I couldn't
12 see. At that point I put my head in the pillow.

13 "Did you say anything as a result of
14 having been struck?

15 "No.

16 "Did he say anything else to you?

17 "He said, I told you not to move white
18 trash was his exact words.

19 "Did anyone else strike you during that
20 particular morning?

21 "Answer: No."

22 Another incident occurred he states
23 during the course when he was being walked to the
24 gym. That testimony where pertinent begins at line
25 12 on page 21.

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1 "Okay. Were you let out of the tent?

2 "Answer: Yes.

3 "Where were you taken?

4 "Down to the gym, the prison area.

5 "Now, on your way to the gym, were you
6 assaulted in any way by anyone else?

7 "Answer: Yes.

8 "By whom?

9 "Yes, I was punched in the back?

10 "By whom?

11 "By the officer who was escorting us,
12 escorting me.

13 "Was there just one officer escorting
14 you?

15 "No, there was one officer per inmate
16 and this -- as we were going to the compound.

17 "And were there other officers, were
18 there -- where were the other officers?

19 "Answer: Standing along the fence
20 line.

21 "I see. And were you held as you were
22 escorted to the gym?

23 "We had a night stick between our arms
24 and back.

25 "Did this officer say anything to you

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1 when he struck you in the back?

2 "He said start moving faster. So I
3 proceeded to walk a little faster and that's when I
4 felt him hit me.

5 "And what did he strike you with, if
6 anything.

7 "He had black gloves on that had
8 leather in the knuckles that they use for, I guess,
9 assaults and that's what I was struck with. As a
10 result of the strikes I fell to my knees.

11 "You fell to your knees. Did the
12 officer say anything else to you?

13 "Answer: Get up and let's go.

14 "And did you obey that command?

15 "Yes.

16 "Were you able to walk at that point?

17 "Yes, in a lot of pain."

18 Further testimony that I find pertinent
19 here at page 45 lines five through 16. This is under
20 cross-examination.

21 "Now, after you were struck in your
22 elbow, after you lifted your head and turned it
23 sideways, you put your face back into the pillow you
24 told me, right?

25 "Answer: Yes.

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1 "And you never lifted it again until
2 you were told to; is that correct?

3 "Answer: Yes.

4 "Question: After you were hit in your
5 back and told to walk faster, you never had to be
6 told again, did you?

7 "Answer: No."

8 Now, in addition to the testimony that
9 I mentioned there and, of course, all the other
10 evidence of record, I examined exhibits P-134 through
11 137 which do accurately reflect, at least 134, 135
12 and 136, contemporaneous examinations, treatment and
13 prescriptions for an inflamed and injured left elbow.
14 So I find frankly that the events that were described
15 here did occur.

16 P-137 indicates (I gather if I had
17 decided to award damages here) the nature of
18 permanency and continuing discomfort. It is a report
19 from February 20th of '99 indicating at least at that
20 point still some disability in the elbow, although
21 not too well tied to the incident some
22 year-and-a-half before.

23 Once again in this instance, I do not
24 find as described here that excessive force was
25 employed. The use of force for the purpose of

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1 enforcing an order or promoting the orderly and
2 controlled movement of prisoners under the
3 circumstances here is allowable at least to certain
4 levels.

5 In this instance, with all prisoners
6 ordered to keep their faces down and in the bunks
7 when the extractions were to begin and with an
8 obvious violation of that order by the man turning
9 his head, one strike on the elbow for the purpose
10 (which turned out to be effective) of securing
11 compliance with that directive I do not find to be
12 the use of excessive force here as well defined in
13 the jury instructions with which we're all familiar.

14 Similarly, a strike of this sort in the
15 back, one single blow for the purpose of enforcing an
16 order to walk promptly and to keep pace in the
17 movement of the prisoners to the gym, with a movement
18 of a large number of prisoners in this and in
19 virtually every instance, once again, I do not find
20 to be the exercise of excessive force within the
21 contemplation of the U.S. Constitution.

22 Would it have been perhaps more
23 desirable that a more additional order without the
24 use of corporal enforcement had been employed?
25 Perhaps so. However, its efficacy cannot be easily

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1 measured and in this case, as we noted, the force
2 employed which I've said I don't think is excessive
3 under the circumstances was indeed effective. As the
4 plaintiff himself acknowledged.

5 Finally, although not every item of
6 evidence has been discussed in this opinion/report,
7 all evidence presented to the Special Master was
8 reviewed and considered. For the reasons set forth
9 above I recommend in this report that the district
10 court enter an order and judgment of no cause for
11 action with regard to Ronald Schmidt.

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C E R T I F I C A T E

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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.


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Theresa O. Mastroianni, C.S.R.

20

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

21

Certificate No. XI0857

Date: September 11, 2008

22

23

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25

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